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10/748,819

12/30/2003

Jody Riesberg

0248-0001

7180

7590

02/06/2007

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EXAMINER

CONLEY, FREDRICK C

ART UNIT

PAPER NUMBER

3673

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

02/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                       |  |  |
|------------------------------|---------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/748,819  | <b>Applicant(s)</b><br>RIESBERG ET AL. |  |
|                              | <b>Examiner</b><br>FREDRICK C. CONLEY | <b>Art Unit</b><br>3673                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/07/06 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,327,330 McCullough.

Claim 1, McCullough discloses a pillow combination comprising:

a main pillow 13 cushion having an underside, a front and rear edge, and first and second side edges defined by seams (102,103), defining a fabric cover filled with a resilient filling (col. 1 lines 53-56); and

a pair of side pads (11,12) each pad filled with a resilient filling, adjacent each of said side edges, said side pads capable of folding under said main pillow (col. 2 lines 3-5) whereby a first and second space is defined by gaps created between the folded under portions and the main pillow especially when the snaps are not connected, said

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first space defined by the gaps between the folded under portions traversing the underside of said main pillow from said front edge to said rear edge when the snaps are not connected and said second space defined by the open inverted U-shaped receiving area along the underside of the main pillow that traverses from said first side edge toward said second side edge.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,678,266 to Petringa et al. in view of U.S. Pat. No. 3,327,330 McCullough.

Claim 1, Petringa discloses a pillow combination comprising:

a central cell 22 defining a main pillow cushion having an underside, a front and rear edge, and a first and second pair of side edges; and

a plurality of side cells 22 defining a pair of side pads, each side pad filled with a resilient filling such as air, adjacent each of said first and second side edges, each pair of said side pads capable of folding under said main pillow whereby a first and a second space is created between seams of said folded under side pads (fig. 9), said first space traversing the underside of said main pillow from said front edge to said rear edge and said second space traversing the underside of said main pillow from said first side edge

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to said second side edge (col. 2 lines 1-14). Petringa fails to disclose a fabric cover filled with a resilient filling. McCullough discloses a pillow having a fabric cover filled with a resilient filling (col. 1 lines 54-57). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a fabric covering and filler as taught by McCullough in order to provide a material that is soft and comfortable to the touch (col. 1 lines 54-56). With regards to the pillow being employed as a side pillow, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,678,266 to Petringa et al. in view of U.S. Pat. No. 3,327,330 McCullough as applied to claim 1, and further in view of U.S. Pat. No. 5,437,070 to Remp.

Claim 3, Petringa, as modified, discloses the pillow as defined in claim 1, but fails to disclose a pillowcase. Remp discloses a pillow having a pillow case (fig. 9). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a pillow case as taught by Remp in order to provide a removable and washable covering for the pillow (col. 3 lines 42-45).

***Response to Arguments***

Applicant's arguments filed 12/07/06 have been fully considered but they are not persuasive.

As stated above, a pair of side pads are interpreted as the wing portions (11,12) of McCullough wherein the each side pad is adjacent each of said side edges defined by seams (102,103) and the first and second space is defined by gaps created between the folded under portions and the main pillow especially when the snaps are not connected, said first space defined by the gaps between the folded under portions traversing the underside of said main pillow from said front edge to said rear edge when the snaps are not connected and said second space defined by the open inverted U-shaped receiving area along the underside of the main pillow that traverses from said first side edge toward said second side edge.

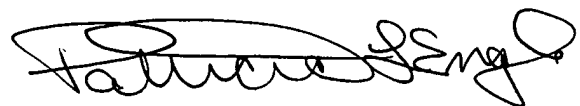
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FC 

  
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2-2-07